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U.S. Citizenship
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Services

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MAY 19 2004

FILE: LIN 03 129 52419 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a radio broadcasting company that seeks to employ of the beneficiary as a morning drive producer. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the position is not a specialty occupation. On appeal, counsel submits a brief and supporting documentation.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a morning drive radio producer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; and the petitioner's response to the director's request for evidence. According to the March 12, 2003 letter of support, the beneficiary would perform duties that entail, in part: planning and coordinating topics to be discussed on the daily morning show; producing the desired sound of the station; complying with federal and local broadcast regulations; evaluating and booking potential guests; producing radio commercials; writing and editing promotion scripts; producing programs and features; co-hosting the morning drive show; creating and implementing station promotions; and producing remote broadcasts. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in communications or a related field.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into this position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the director misinterpreted the evidence submitted with the petition and in response to the director's request for evidence, all of which establishes that the proffered position is a specialty occupation. In addition, counsel submits additional evidence to establish that the position is a specialty occupation.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The proffered position is a radio producer. The 2004-2005 edition of the *Handbook* describes educational requirements for entry into the field of acting, directing or producing. "There are no specific training requirements for producers. They come from many different backgrounds. . . . No formal training exists for

producers; however, a growing number of colleges and universities now offer degree programs in arts management and in managing nonprofits.” The *Handbook* clearly states that there is no requirement for a degree in a specific specialty for entry into this field.

Counsel’s reference to and assertions about the relevance of information from the Department of Labor’s *O*Net* and the *Dictionary of Occupational Titles (DOT)* are not persuasive. Neither the *DOT*’s SVP rating nor a Job Zone category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

Regarding parallel positions in the petitioner’s industry, counsel submits a letter from a professor of communications at the University of Washington. The professor included the results of a survey performed by a professor emeritus of the University of Missouri School of Journalism. The survey indicates that 70 per cent of radio journalists have bachelor’s degrees, and 72 per cent of those people had journalism or communication majors. These numbers increase when broken down by age. For those in their 20s, 79 per cent had bachelor’s degrees, with 82 per cent of those having journalism or communications majors. The resulting percentage is that for radio journalists in their 20s, 65 per cent of those who have a degree, have one in a specific specialty. While the numbers may indicate a trend in the industry, as counsel asserts, it is clear that at this point, there is no requirement for a degree in a specific specialty.

Counsel submits a number of Internet listings for producers. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner. Some of the advertisements are for television stations rather than radio stations. There is no indication that the size of the market, the number of employees, or the details of the advertised positions are parallel to the instant position. Only one of the listings submitted in response to the director’s request for evidence stated that the degree must be in a specific specialty. The rest simply stated that a degree was required. The majority of the advertisements submitted on appeal do state that a degree must be in journalism, communications or a related field, but, as discussed above, it is not clear that these positions are parallel to the proffered position. Thus, the advertisements have little relevance.

The record does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. In response to the director’s request for evidence, the petitioner submitted a copy of the diploma for the morning drive producer currently on staff. It only stated that the individual had received a bachelor of arts, but did not state an area of specialization. On appeal, counsel provides documentation from the individual’s university stating that the degree was in communications. The director had specifically requested that the petitioner “submit documentation to show that individuals with baccalaureate or

higher degrees *in a specialized area* have been employed in the past.” (Emphasis added). CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(12). The purpose of a Request for Evidence (RFE) is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8).

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. The record only contained information regarding the producer’s bachelor’s degree, without providing evidence regarding the area of specialization and therefore, the petitioner has not met its burden of proof in this regard.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director’s denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.